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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re the Marriage of ALICIA ESCOBEDO
and PAUL BLAZEVOICH.

ALICIA ESCOBEDO,

Respondent,

v.

PAUL BLAZEVOICH,

Appellant;

SAN DIEGO COUNTY DEPARTMENT
OF CHILD SUPPORT SERVICES,

Intervener and Respondent.

D054199

(Super. Ct. No. D135877)

APPEAL from an order of the Superior Court of San Diego County, Adam

Wertheimer, Judge. Affirmed.

Paul Blazeovich appeals the order of the trial court denying his motion to prevent enforcement of a judgment against him for child support arrears. Blazeovich contends that

because at the time the arrears judgment was entered in 1992 the Civil Code allowed a laches defense to enforcement of a child support arrears judgment, the lower court erroneously relied on post-1992 amendments to deny his motion to not enforce the judgment. Blazeovich also contends the trial court had discretion not to enforce the arrears judgment even under post-1992 amendments. We affirm the order.

FACTS

In 1979, a trial court entered an order for child support to be paid by Blazeovich to Alicia Escobedo, who had sole custody of their minor child. In May 1992, Blazeovich and Escobedo stipulated to, and the trial court entered judgment for, child support arrears in the amount of \$6,008.38, to be paid at \$300 per month. Also in May 1992, the trial court granted joint custody of the minor to Blazeovich and Escobedo. The minor turned 18 in 1996. Blazeovich was incarcerated from 1999 to 2007.

Blazeovich made only two payments on the arrears judgment, one in July 1992 and another in June 2003, collected by the Department of Child Support Services (DCSS). Therefore, the record shows Blazeovich made one arrears payment between 1992 when he stipulated to the arrears judgment and 1999 when he became incarcerated. Blazeovich contends the minor lived with him 100 percent of the time from 1992 through 1994, during which time he did not receive support from Escobedo. Escobedo disputes the contention and alleges the minor lived with her half of that time.

In June 2008, DCSS filed a motion to determine arrears of Blazeovich's child support obligation, including interest, and to set arrears payments. Blazeovich filed motions for declaratory relief, to prevent enforcement of the arrears judgment, or to

determine the amount of arrears or for offset; and for attorney fees and costs. The trial court denied all of Blazeovich's motions, including his request to apply a laches defense to prevent enforcement of the 1992 stipulated judgment. The trial court found the 1992 judgment was enforceable because barring enforcement would amount to an impermissible retroactive modification of a child support judgment. The trial court ordered enforcement of \$12,620.53 in child support arrears and accrued interest. We review de novo the purely legal questions Blazeovich raises.

DISCUSSION

A. Retroactive Elimination of Laches and Lack of Diligence as Defenses

Blazeovich relies on a superseded section of the Civil Code in effect in 1992 to argue the trial court had authority to apply a laches or lack of diligence defense to enforcement of the 1992 judgment. That section provided:

"The lack of diligence for more than 10 years in seeking enforcement of a judgment, order, or decree of the court made, entered, or enforceable pursuant to this part that requires the payment of money shall be considered by the court in determining whether to permit enforcement of the judgment, order or decree" (Former Civ. Code, § 4384.)

However, in 1993, the Legislature re-enacted Family Code section 4502 to provide that a judgment for child support is payable until paid in full (Stats. 1993, ch. 219, § 143) and in 2002, former Family Code section 4502 was amended to add subdivision (c), which eliminated the laches defense in private actions to enforce child support judgments. (Stats. 2002, ch. 304, § 1.) The law now provides that in an action for enforcement of a child support judgment, the court may consider a laches defense "only

with respect to any portion of the judgment that is owed to the state" (Fam. Code, § 291, subd. (d)) and "a money . . . judgment is enforceable until paid in full or otherwise satisfied." (Fam. Code, § 291, subd. (a).) The California Supreme Court concluded the Legislature intended to make the elimination of the laches defense in private enforcement of child support judgment actions retroactive. (*In re Marriage of Fellows* (2006) 39 Cal.4th 179, 186-188 (*Fellows*).)

Blazevich relies on *In re Marriage of Garcia* (1998) 67 Cal.App.4th 693 to support his contention that lack of diligence is not synonymous with laches, and lack of diligence must be considered by the trial court in determining whether to permit enforcement of a judgment for child support arrearages. (*Id.* at p. 699.) However, the California Supreme Court expressly disapproved *Garcia* for not applying current law retroactively. (*Fellows, supra*, 39 Cal.4th at p. 188.) Family Code section 4, subdivision (c), currently provides:

"Subject to the limitations provided in this section, the new law applies on the operative date to all matters governed by the new law, regardless of whether an event occurred or circumstance existed before, on, or after the operative date, including, but not limited to, commencement of a proceeding, making of an order, or taking of an action."

The *Fellows* court held that "as a general rule, future changes to the Family Code apply retroactively." (*Fellows, supra*, 39 Cal.4th at p. 186.) Therefore, the trial court did not have discretion to consider Blazevich's lack of diligence or laches defenses. We conclude that in this private enforcement action, neither the laches nor lack of diligence

defense was available to Blazeovich to prevent enforcement of the 1992 judgment for child support arrears.

B. Trial Court's Equitable Discretion to Refuse to Enforce Arrears

Blazeovich also contends that even under the current Family Code, the trial court had equitable discretion to deny Escobedo's request for enforcement. Several cases support the contention that courts in child support proceedings have broad equitable powers, but only "to the extent permitted by the child support statutes." (*In re Marriage of Lusby* (1998) 64 Cal.App.4th 459, 471; *County of Santa Clara v. Wilson* (2003) 111 Cal.App.4th 1324, 1326-1327.) For example, the trial court may refuse to enforce arrears that accrued while the minor was living with the debtor spouse. (*In re Marriage of Trainotti* (1989) 212 Cal.App.3d 1072, 1074-1076.) The trial judge may also refuse to enforce arrears that accrued after the date of the minor's emancipation. (*In re Marriage of Utigard* (1981) 126 Cal.App.3d 133, 144-145.)

Here, Blazeovich contends the trial court had equitable discretion to refuse to enforce arrears that accrued before the minor's emancipation and *while Escobedo had sole custody*. Blazeovich presents no authority and we have found none to support his contention. The child support statutes have been amended and apply retroactively because the state has a substantial interest in " 'strengthen[ing] the public policy favoring enforcement of an obligor's responsibility to pay support.' " (*Fellows, supra*, 39 Cal.4th at pp. 189, quoting Assem. Com. on Judiciary, Analysis of Sen. Bill No. 1658 (2001-2002 Reg. Sess.) as amended June 19, 2002, p. 9.) It is of no consequence under the Family Code or case law whether the minor lived with him or was emancipated after the

period for which he owes arrears. The judgment for child support arrears Blazeovich seeks to avoid was for delinquent child support payments that accrued in 1992, before he contends the minor lived with him or became emancipated. The trial court properly enforced the arrears judgment because nonenforcement of a valid arrears judgment is a prohibited retroactive modification of a child support order.

DISPOSITION

The order is affirmed. Escobedo and DCSS are entitled to their costs on appeal.

McDONALD, J.

WE CONCUR:

NARES, Acting P. J.

AARON, J.